IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(*Special Original Jurisdiction*)

WEDNESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

P R E S E N T

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

* * *

WRIT PETITION NO : 15158 of 2005

Between:

D. Narasa Reddy, S/o. D. Somi Reddy,
R/o. D.NO. 7/93, J.K. Road, Pulivendula, Kadapa District.

..... PETITIONER

A N D

1 The Superintending Engineer, Roads & Buildings, Kadapa District.
2 The Executive Engineer, Roads & Buildings, Pulievendula, Kadapa

District.
3 The Pulivendula Municipality, Rep by its Commissioner,

Pulievendula, Kadapa District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the impugned notice in Roc.No. 231/TPBO/2005, dated 1-7-2005 issued by the 3rd respondent to demolish the building Door No. 7/93, J.K. Road, Pulivendula, Kadapa District as illegal, arbitrary and against to the principles of natural justice and opposed to Art. 14 and 300-A of the Constitution of India and to pass such other order or orders as this Hon'ble Court may deems fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.N.PARAMESWARA REDDY
Counsel for the Respondents: GP FOR ROADS & BUILDINGS

The Court made the following :

O R D E R

This writ petition is filed to declare the impugned notice in ROC.No.231/TPBO/2005, dated 01-7-2005 issued by the third respondent to demolish the building bearing Door No.7/93, situate at JK Road, Pulivendula, Kadapa district as illegal, arbitrary and against the principles of natural justice and Article 14 and 300-A of the Constitution of India.

When the matter came up for hearing, both the counsel conceded at the bar that the facts in this writ petition are similar and identical to the facts in WP.No.20778 of 1997, which was disposed of by a Division Bench of this court on 03-02-1998, and requested to dispose of this writ petition also in terms of the judgment in the said writ petition.

Considering the facts and circumstances of this case and on perusing the judgment

of the Division Bench of this court dated 034-2-1998 passed in WP.No.20778 of 1997, wherein it was observed as follows:

> *"Though this writ petition and many other writ petitions are premature, as they have been filed in the absence of any specific orders of eviction or dispossession or demolition, in order to see that the interest of both the parties is safe guarded, we do not like to dismiss the writ petition and we dispose of the writ petition directing the authorities to take appropriate action complying with the observations to be made by us in this regard.*
>
> *When a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take the law into their hands, jump into the premises, and attempt to evict the occupants or dispossess them or demolish their property. Before taking any such action, the authorities concerned shall issue a notice notifying as to the nature of the property, the purpose for which it is required, to whom it belongs and the action proposed calling for explanation or objections, if any, from the occupants and after considering the said objections or explanation, the authorities shall pass appropriate orders, if necessary by giving oral hearing wherever there is a dispute as to the ownership of the property. In cases where demolition has already taken place, the authorities shall pass orders to determine the damages. It is very clear that barring a few cases, in most of the cases, which we came across and dealt with separately, no separate orders of eviction, dispossession or demolition, as the case may be, have been passed. In cases of demolition also, they were not preceded by any order or notice of demolition. The complaint of the occupants though looks misconceived, but after hearing the arguments, we found that there was an attempt by the Government either to widen the roads or clear the encroachments. But, in our view, before doing that, the authorities have to follow certain principles of natural justice. Hence, the writ petition is disposed of reserving liberty to the State to take action, if it so desires, after complying with the following requirements*
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> *.*
>
> *If the authorities viz., the Mandal Revenue Officer, Revenue Divisional Officer, Executive Officer of local authority want to take any action of eviction, dispossession or demolition, first they shall issue a notice to the occupants calling upon them to show cause as too why the proposed action shall not be taken. On receipt of such objections*

or explanation, if there is any objection as to the ownership of the property, the Mandal Revenue Officer or other authorities concerned shall determine the extent of encroachment or unauthorized occupation and shall determine whether the property in question belongs to the Government or any other local self government authority or to the occupants. In case of demolition of the private property, the Mandal Revenue Officer or other authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of Roads and Buildings Department. On such assessment of damages, the Mandal Revenue Officer or the concerned authority shall take appropriate steps to disburse the amount qualified forthwith. If the demolition took place is in respect of the property of the Government, the question of payment of damages will not arise. The occupants are entitled to remove the material used for the construction. The Mandal Revenue Officer shall issue a notice within 60 days from the date of receipt of a copy of this order calling upon the occupants to show cause as to why the action proposed shall not be taken by giving 60 days to file the objections, if any. The person interested viz., the occupants shall submit their objections or explanation within the time stipulated together with any other documents they would like to rely upon in support of their case. On receipt of such explanation/objections and documents, if any, the Mandal Revenue Officer or the concerned authority shall consider the same, if necessary, by giving an oral hearing and then pass appropriate orders within three months thereafter. In case of any enquiry, the same should be conducted in a summary way and the occupants shall produce all the evidence, which they want to rely upon before the Mandal Revenue Officer on the appointed day.

If there is any claim for grant or assignment of the property, the concerned officer shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of the occupants. In cases of demolition, the loss caused shall have to be assessed by the Engineer of the area concerned, who, before assessing, shall visit the premises along with the officer concerned and the occupants or the persons interest on the date notified by the concerned officer. The occupants shall appear before the concerned authority on all the dates in order to complete the enquiry at an early date. Till the conclusion of the enquiry by the Mandal Revenue Officer, statusquo obtaining as on today shall continue".

The respondents are directed to issue notice to the petitioner positively a week before demolishing any part of the petitioner's house bearing Door No.7/93, situate

at JK Road, Pulivendula, Kadapa district and follow due process of law.

Accordingly, the writ petition is disposed of in terms of the judgment of the Division Bench of this Court dated 03-02-1998 passed in WP.No.20778 of 1997. However, the respondents are directed to follow the guidelines issued in the said judgment. However, there shall be no order as to costs.

JULY 13, 2005. ----------

I S L. ELIPE DHARMA RAO, J.

To

1 The Superintending Engineer, Roads & Buildings, Kadapa District.
2 The Executive Engineer, Roads & Buildings, Pulievendula, Kadapa

District.
3 The Commissioner, Pulivendula Municipality,

Pulievendula, Kadapa District.

4 Mr.N.PARMESWARA REDDY, Counsel for the Petitioner.

5 Two CCs to the Govt.Pleader for R & B, High Court Buildings

High Court of AP Hyderabad. (OUT)

6 TWO CD copies.